

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARINA CONERLY,

Plaintiff,

v.

JULIE G. YAP, et al.,

Defendant.

No. 2:21-cv-01132-TLN-CKD PS

ORDER VACATING FINDINGS AND
RECOMMENDATIONS;

FINDINGS AND RECOMMENDATIONS

Plaintiff proceeds pro se in this action, which was referred to the undersigned pursuant to Local Rule 302(c)(3). See 28 U.S.C. § 636(b)(1). By order dated July 26, 2021, the undersigned screened plaintiff's complaint and notified plaintiff the complaint was subject to dismissal for failure to state a valid claim for relief. (ECF No. 4.) Although the undersigned noted that it appeared that plaintiff might not be able to state a valid claim premised on the events described in the complaint, out of caution, plaintiff was granted leave to file an amended complaint within 30 days. Plaintiff did not file an amended complaint.

On September 16, 2021, having received no amended complaint or other communication from plaintiff, the undersigned recommended this action be dismissed for failure to state a claim and failure to prosecute. See Fed. R. Civ. P. 41(b). (ECF No. 6.) Plaintiff filed objections to the September 16, 2021 findings and recommendations. (ECF No. 7.) In the objections, plaintiff argues that the complaint states a claim and that plaintiff has not failed to prosecute this case.

1 Having reviewed plaintiff's objections, the undersigned will vacate the recommendation
2 to dismiss on the ground of failure to prosecute this case. However, for the reasons set forth in the
3 July 26, 2021 screening order, the undersigned still recommends this action be dismissed for
4 failure to state a claim. In addition, for the reasons set forth in the screening order, and having
5 considered plaintiff's argument in the objections, the undersigned finds it plainly appears that
6 granting further leave to amend would be futile. California Architectural Bldg. Prod. v.
7 Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988) (holding that although the Federal
8 Rules of Civil Procedure favor liberal amendment, valid reasons for denying leave to amend
9 include undue delay, bad faith, prejudice, and futility). Accordingly, the undersigned will
10 recommend this action be dismissed without leave to amend at this time for failure to state a
11 claim.

12 In accordance with the above, IT IS ORDERED that the findings and recommendations
13 filed September 16, 2021 (ECF No. 6) are VACATED.

14 In addition, IT IS RECOMMENDED:

- 15 1. This action be dismissed without leave to amend for failure to state a claim; and
- 16 2. The Clerk of the Court be directed to close this case.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, plaintiff may file written objections
20 with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
22 failure to file objections within the specified time may waive the right to appeal the District
23 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: October 27, 2021

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26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE
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